THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.8285 OF 2007

DATED 25-06-2007

Between:

M/s New Appollo Medical and Surgicals …Petitioner

And

The Commercial Tax Officer …Respondent

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.8285 OF 2007

O R D E R *(Per the Hon'ble Sri Justice Bilal Nazki):*

Heard learned counsel for the parties.

The case of the petitioner is that he has been charged tax on 'catgut sutures' as drugs and medicines under Entry 37 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act"), which carries tax @ 10%, whereas 'catgut sutures' had to be charged as surgical goods under Entry 208 of the First Schedule to the Act, which carries tax @ 8%. He submits that this Court has already decided this issue by a judgment, dated 26-03-2007, in ***Balaji Surgicals, Kurnool v. The Deputy Commissioner of Commercial Taxes and another, Kurnool*** [1]. Therefore, he filed the writ petition challenging the order of assessment.

Learned Special Standing Counsel for Commercial Taxes appearing for the respondent, however, pointed out that the order of assessment has been passed on 12-05-2006 and the appeal could be filed within one month. No appeal was filed nor the order of assessment was challenged, at any stage, before any forum. It is only because of the judgment of this Court in another case, that the present writ petition has been filed. Since the petitioner had allowed the

assessment to become final, he cannot get it reopened by filing a writ petition. In this connection, he relies on the Constitution Bench judgment of Supreme Court in ***Mafatlal Industries Ltd v.Union of India***[2], wherein at para 108 (iv) the Supreme Court laid down-

> *"It is not open to any person to make a refund claim on the basis of a decision of a court or tribunal rendered in the case of another person. He cannot also claim that the decision of the court/tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well-established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1) (c) of the Limitation Act, 1963, has no application to such a claim for refund."*

In view of the authoritative judgment of the Constitution Bench of the Supreme Court, we feel this writ petition is not maintainable and as such it is dismissed. No order as to costs.

_____

(Bilal Nazki, J)

Dated 25th June, 2007

(S.Ananda Reddy, J)

vrn

[1] 44 APSTJ 89

[2] (1997) 5 Supreme Court Cases 536